



Texas Department of Insurance

Division of Workers' Compensation

7551 Metro Center Drive, Suite 100 • Austin, Texas 78744-1645

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

GENERAL INFORMATION

Requestor Name and Address:

DWC Claim #:
Injured Employee:
Date of Injury:
Employer Name:
Insurance Carrier #:

Respondent Name:

LA MARQUE ISD

Carrier's Austin Representative Box

Box Number 43

MFDR Tracking Number:

M4-12-2945-01

MDFR Received Date

May 22, 2012

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "The reason the DWC060 is being submitted over a year after the operation, is due to my unethical lawyer. On 1/26/11 my agreement was signed with the carrier, and my neck was finally included as part of the compensable injury. From that time, until my benefits were terminated, my lawyer was 'working' with the adjuster for my surgical reimbursement. I paid my laweyr [sic] \$2,300 just for this purpose. (Please reference the enclosed demand letter I sent my attorney) I knew nothing about the medical review form or process until my present ombudsman, Jesus Ortiz, recently gave me the form at my BRC on May 3, 2012. From 10/30/08 to 4/25/10 (surgery date), all the insurance carrier did was have me under go 3 medical tests. I was sent to D.D., Dr. Davis, 3 times, and then D.D., Dr. Novak. Even after my BRC in March 2010, my neck was still not considered to be included in my compensable injury. The pain was preventing me from sleeping and I was getting progressively worse. Due to my impaired mobility, I spent most of my days in bed. This led to suicidal thoughts. That is when I realized I needed to do whatever it took to help myself. Nobody else seemed to care. I did not have the surgery before it was approved to be spiteful/break rules. I had my surgery in Florida only after an extensive search of medical facilities (that do minimally invasive lazer spinal surgery). My treating doctor, Dr. Lindsey, recommended regular spinal surgery (see enclosed), costing of \$50,000, which I could not afford. The only doctor in Houston that performs lazer spinal surgery wanted \$15,000 up -front. Also I discovered he was once sued for piercing a patient's esophagus. Microspine, located in Florida had a very good reputation and was affordable. My decision was not hasty, and not easy to organize. My brother in Alabama had to meet and help me. I was very frugal. Now I am better and the carrier agrees. However, they did nothing to improve my health (I even had to pay for a new MRI, because the other was too old!) My JI assigned adjuster, Tangela Williams, may have conspired with my lawyer to scam/string-me along, so it would close 'my-window-of-opportunity' for me to file the DWC060 form in a timely manner. My lawyer was a willing participant, because she was paid an additional \$2,300. JI won, my lawyer won, and I lost twice! I paid for my surgery over \$10,000 and my lawyer got an additional \$2,300 for pretending to help. An insurance carrier should not be allowed to run you from doctor to doctor, send you to undergo various tests, then deny, deny, deny no matter what. The doctors recommend and the tests show. From the

start, JI was trying to wear me down, and not properly inform me of the rules, for the sole purpose of not honoring my claim or paying the least possible.”

Amount in Dispute: \$10,135.56

RESPONDENT’S POSITION SUMMARY

Respondent’s Position Summary: “It is the carrier’s position that reimbursement is not due for these services as the carrier was not allowed review of the services under preauthorization rule 134.600(p), the requestor did not seek treatment from the treating doctor or referral of the treating doctor as permitted in 408.022 and 126.9. Even is the treating doctor had referred the patient to this doctor it was not in compliance with 408.023. Because the requestor elected to pursue and received treatment from a non-Texas Workers’ compensation system participant, for the compensable injury, the requestor is not entitled to reimbursement, 408.24. Under 413.042 the non-Texas Workers’ Compensation doctor is permitted to pursue private claims for the cost of the health care as the requestor violated 413.042(a)(2).”

Response Submitted by: JI Specialty, PO Box 7, La Marque, TX 77568.

SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
April 26, 2010 through May 1, 2010	Out-of-Pocket Expenses for surgery	\$10,135.56	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all applicable, adopted rules of the Texas Department of Insurance, Division of Workers’ Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for injured employees to pursue a medical fee dispute.
2. 28 Texas Administrative Code §133.270 sets out the procedures for injured employees to receive reimbursement for out of pocket expenses.
3. The services in dispute were reduced/denied by the respondent with the following reason codes:

Explanation of benefits dated May 10, 2012

- 29 – The time limit for filing has expired.
- 185 – The rendering provider is not eligible to perform the service billed.
- 197 – Payment denied/reduced for absence of precertification/authorization.
- 5037 – Per Rule 134.600P2 non-emergency outpatient and ambulatory surgical services require preauthorization.
- 5047 – Per TWCC Rule 134.801(c) a health care provider shall not submit a bill later than the first day of the 11th month after the date the services are provided.

Issues

1. Did the requestor submit the out-of-pocket expenses for the services in dispute timely and in

accordance with 28 Texas Administrative Code §133.307?

2. Did the requestor obtain preauthorization for the surgical intervention of April 28, 2010?
3. Is the requestor a health care provider?
4. Is the requestor entitled to reimbursement?

Findings

1. Pursuant to 28 Texas Administrative Code §133.307(c) Requests for MFDR shall be filed in the form and manner prescribed by the division. Requestors shall file two legible copies of the request with the division. (1) Timeliness. A requestor shall timely file the request with the division's MFDR Section or waive the right to MFDR. The division shall deem a request to be filed on the date the MFDR Section receives the request. A decision by the MFDR Section that a request was not timely filed is not a dismissal and may be appealed pursuant to subsection (g) of this section. (A) A request for MFDR that does not involve issues identified in subparagraph (B) of this paragraph shall be filed no later than one year after the date(s) of service in dispute. (B) A request may be filed later than one year after the date(s) of service if: (i) a related compensability, extent of injury, or liability dispute under Labor Code Chapter 410 has been filed, the medical fee dispute shall be filed not later than 60 days after the date the requestor receives the final decision, inclusive of all appeals, on compensability, extent of injury, or liability; (ii) a medical dispute regarding medical necessity has been filed, the medical fee dispute must be filed not later than 60 days after the date the requestor received the final decision on medical necessity, inclusive of all appeals, related to the health care in dispute and for which the insurance carrier previously denied payment based on medical necessity; or (iii) the dispute relates to a refund notice issued pursuant to a division audit or review, the medical fee dispute must be filed not later than 60 days after the date of the receipt of a refund notice. Review of the submitted documentation has determined that the requestor has not met the requirements of the rule.
2. In accordance with 28 Texas Administrative Code §134.600(p) Non-emergency health care requiring preauthorization includes: (2) outpatient surgical or ambulatory surgical services as defined in subsection (a) of this section. Review of the documentation finds that the requestor did not obtain preauthorization for the ambulatory surgical services; therefore the requestor has not met the requirements of the rule.
3. The respondent denied the services using reason code "5047 – Per TWCC Rule, 134.801(C) a health care provider shall not submit a bill later than the first day of the 11th month after the date the services are provided." and "29 – The time limit for filing has expired." 28 Texas Administrative Code §133.270 is the rule that allows for an injured worker to seek reimbursement for out-of-pocket expenses. The rule and its subsections do not address time limits for injured workers submitting receipts for their out-of-pocket expenses. 29 Texas Administrative Code §134.801(C) is specific to health care providers; 28 Texas Administrative Code §133.20 (b) Except as provided in Labor Code §408.0272(b), (c) or (d), a health care provider shall not submit a medical bill later than the 95th day after the date the services are provided. The carrier has not met the requirement of the rules as the injured employee is not a health care provider.
4. The respondent also denied the services using reason code "185 – The rendering provider is not eligible to perform the service billed." In accordance with Texas Labor Code §408.021(c), except in an emergency, all health care must be approved or recommended by the employee's treating doctor. The injured employee's treating doctor did not refer the injured employee to the physician that provided the treatment/services in dispute. Therefore, the requestor did not meet the requirements of the Labor Code.

Conclusion

For the reasons stated above, the division finds that the requestor has established that reimbursement is not due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is entitled to \$0.00 reimbursement for the disputed services.

Authorized Signature

_____ Signature	_____ Medical Fee Dispute Resolution Officer	_____ June 22, 2012 Date
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YOUR RIGHT TO REQUEST AN APPEAL

Either party to this medical fee dispute may appeal this decision by requesting a contested case hearing. A completed **Request for a Medical Contested Case Hearing** (form **DWC045A**) must be received by the DWC Chief Clerk of Proceedings within **twenty** days of your receipt of this decision. A request for hearing should be sent to: Chief Clerk of Proceedings, Texas Department of Insurance, Division of Workers Compensation, P.O. Box 17787, Austin, Texas, 78744. The party seeking review of the MDR decision shall deliver a copy of the request for a hearing to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §148.3(c), including a **certificate of service demonstrating that the request has been sent to the other party.**

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.